

11000 PROTEST & APPEAL

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11010 RECORDING A PROTEST

All Protest correspondence should be routed to the Protest Section, Protest Control Desk (PCD), Mail Stop D-12. The Protest Control Technicians will record the protest, update BETS and PASS, and send an acknowledgment letter to the taxpayers.

All cases will be reviewed by a Protest Unit manager, supervisor, or designee to determine if the case should be handled by the Protest Unit, returned to the originating unit for further work, or referred to Legal.

When the protest is received in the Protest Unit, a copy of the original protest letter will be sent to the auditor who conducted the examination. This is to allow the auditor to respond to any issues raised in the protest letter, and to provide any additional information that may be helpful to the hearing officer in resolving the case.

Cases that are not fully developed have notices that were issued due to a failure to furnish information, or have notices that were issued due to an impending statute of limitations, may be returned to the originating unit for further development or consideration. If this occurs, Hearing Officers will be available to discuss the case. Upon completion, the case should be returned to the Protest Unit via cover memo along with the revised analysis/narrative report for final determination and processing.

In addition, the auditor will be contacted to discuss final protest determinations, which involve the following:

- *a material revision/withdrawal,*
- *a revision/withdrawal that involves audit practice considerations, regardless of the amount,*
- *revisions/withdrawals that involve significant gray issues, or*
- *revisions/withdrawals on cases where the auditor has requested notification of the final determination.*

To verify receipt of a protest, users can check BETS * * or PASS.

NOTE: ((* *)) = Indicates confidential and/or proprietary information that has been deleted.

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11020 PROTESTS & APPEALS PROCESS

When the taxpayer and representative disagrees with audit's recommendations, the taxpayer and representative should be informed of the protest and appeal process.

PROTEST PROCESS

According to R&TC §19041, protests against proposed additional tax must be filed in writing, within 60 days after the mailing of the NPA, with the Franchise Tax Board, Protest Section, Sacramento, CA 95867.

The taxpayers may file their protests on FTB Form 3531 PROTEST or in a letter-format detailing the pertinent protest information. See **MAPM 11080** for Requirements for a Valid Protest.

If requested, the taxpayer will be given an oral hearing. These hearings are informal and will normally be conducted in Sacramento or at one of the California field offices. If an oral hearing is not requested, the Hearing Officer assigned to the case will initiate correspondence to enable the taxpayer to submit information and documentation to determine whether or not the assessment is valid.

Upon resolving the protest, the taxpayer will be issued a Notice of Action. If the taxpayer disagrees with the protest determination, they may appeal to the State Board of Equalization or pay the deficiency and file a claim for refund.

APPEAL PROCESS

The taxpayer has 30 days after the mailing of the Notice of Action to appeal in writing to the State Board of Equalization. If no appeal is filed within the 30-day period, the deficiency becomes final and the tax is due and payable within ten days after demand for payment is mailed to the taxpayer.

When an appeal is filed, both the Franchise Tax Board and the taxpayer will be given an opportunity to file additional information in support of their positions. The appeal will be set for an oral hearing before the Board of Equalization unless the oral hearing is waived by both parties.

Once the Board of Equalization has evaluated the facts and rendered a decision, the law allows for a rehearing requested by either party within 30 days of the decision. If no rehearing petition is filed, the Board's decision becomes final 30 days after it is rendered. If a rehearing petition is filed, the Board's decision on rehearing becomes final 30 days following the decision on the rehearing.

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Once a decision is rendered by the Board of Equalization, it is final and binding on the Franchise Tax Board, but not on the taxpayer.

The taxpayer may file in California Superior Court, after a denial by the Board of Equalization, by paying the tax and filing a claim for refund. After the California Superior Court has rendered its decision either the FTB or the taxpayer may file an appeal on the decision to the California Appellate Court and/or the California Supreme Court, and ultimately the U.S. Supreme Court.

CLAIM FOR REFUND

The taxpayer may pay the deficiency and file a claim for refund at any time during the protest process.

If the Franchise Tax Board takes action to deny the claim for refund, the taxpayer has 90 days after the denial letter is mailed to either file or appeal with the Board of Equalization or initiate action in Superior Court. If the taxpayer files a claim for refund with the Franchise Tax Board, and it fails to act on the claim within six months, the taxpayer may file in California Superior Court as though the claim had been denied by the Franchise Tax Board. The appeals procedures discussed above would apply to the decisions of the California Superior Court.

ASSISTING LEGAL DIVISION

The resolution of protest and appeals cases often involves either the gathering of additional information from the taxpayer's records or the verification of information submitted by the representative. In either situation, field audit activity may be necessary.

The scope of an assignment to assist the Legal Division is generally determined prior to auditor assignment. Additional information developed in the course of the assignment may indicate that the scope of field activity should be either limited or expanded. These recommendations should be discussed with your supervisor and legal.

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11030 CLASSIFICATION OF PROTESTS

*MOST PROTESTS ARE CLASSIFIED AS "UNDOCKETED" WITH THE BALANCE CLASSIFIED AS "DOCKETED." GENERAL GUIDELINES FOR CLASSIFYING PROTESTS ARE PRESENTED IN **MAPM 11040** AND **MAPM 11050**.*

11040 DOCKETED PROTEST

If the basis given appears to involve an unclear question of law concerning material assessment amounts, and a hearing is requested, the protest may be referred to Legal for their consideration as a docketed protest. Generally, cases involving * * * * * in tax are referred to Legal

Whenever the Legal Division resolves a docketed protest, the taxpayer's file, along with a "greensheet", form FTB 6664 (Legal Division's Instructions), and transmittal form FTB 7023 are routed to the Technical Resource Section for issuance of the Notices of Action.

NOTE: ((* * *)) = Indicates confidential and/or proprietary information that has been deleted.

11050 UNDOCKETED PROTEST

Protests not meeting the criteria for docketed protests are usually classified as undocketed protests. Undocketed protests are analyzed further to determine their dispositions. The Protest Unit will generally handle the undocketed protests. There are situations where the undocketed protest will be returned to the auditor for resolution. Such situations include assessments where the failure to furnish information penalty was issued or substantial documentation must be gathered.

See **MAPM 11120** for more information on protests returned for further development.

11060 PROTESTS - PENDING FEDERAL (PF)

If the NPA was based on a Revenue Agent's Report (RAR) and the protest states that the taxpayer is protesting the federal adjustment, the case should be coded PF Protest and it is routed to the Protest Control Desk for processing. BETS * * will show the auditor's initials as PF.

The physical control of a Multistate PF Protest is maintained in Data Services and Storage (DSS). An In-Lieu sheet is placed in the folder by DSS showing the returns that they have removed from the folder and have under control for follow-up:

- When the taxpayer sends in the final determination, Data Services and Storage pulls the folder and routes it to Corporation Audit.
- The case is then assigned to an auditor who will act on the protest. Taking into consideration the final federal determination, the auditor will reconsider the proposed assessment and presents the findings to the taxpayer or its representative.
- If a hearing was requested, the auditor's letter should ask if a hearing is still desired. The auditor should keep in mind that the taxpayer does not need to reiterate its request for a hearing. Therefore, the auditor cannot discourage the taxpayer or the representative from exercising their right to an oral hearing.
- If the taxpayer requested a hearing and the hearing is still desired, the case should be transferred to the Protest Unit.

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11070 PROTESTS - FIELD AUDIT

If the NPA originated from a field audit and it is protested, it should be referred to the Protest Control Desk. The Protest Control Desk will record the protest in BETS and PASS. If the protest requires the auditor to continue to work the case, the protest will be returned to the originating office/auditor. In such a case, the auditor would continue to work the protest. After working the protest, the protest should be referred back to the Protest Unit with a cover letter indicating their final recommendation. If the taxpayer still requires a hearing, the Hearing Officer assigned to the case will conduct the hearing and resolve the protest. If the taxpayer is in agreement with the auditor's recommendation, the Protest Unit will issue the proper Notice of Action based on the auditor's final recommendation.

See MAPM 11110 for information on hearing requests.

11080 REQUIREMENTS FOR VALID PROTEST

California Revenue and Taxation Code §19041 provides that "within 60 days after the mailing of each notice of additional tax proposed to be assessed the taxpayer may file with the Franchise Tax Board a written protest against the proposed additional tax, specifying in the protest the grounds upon which it is based."

The Notice of Proposed Assessment (NPA) contains the procedures to file a protest. The NPA Insert - form FTB 5830C, is included with the NPA. This form explains the protest procedures and advises the taxpayer of the availability of the Franchise Tax Board Taxpayer Advocate.

In summary, the following criteria must be met before a letter will be recorded as a protest:

1. The letter must be timely. See **MAPM 11090**
2. The letter must state the taxpayer's name, account number, and tax year.
3. The letter must state the basis of the protest.
4. The corporation must be active, not suspended. See **MAPM 11100** and **MAPM 6170**.

11090 PROTESTS - TIMELINESS

Compare the date the protest was received at Franchise Tax Board with the date of the NPA to determine that the protest was timely filed. Protests must be filed within 60 days of the date of the NPA. If the NPA was remailed to a better address, the 60-day period begins from the date the NPA was remailed. (The NPA copy will be stamped with "Remailed" and a date.) If it is determined that the protest was timely, see **MAPM 11010** for recording the protest.

Untimely protests will only be treated as timely if the delay is caused by the Franchise Tax Board. For reinstating the NPA to protest status after it has been finalized, see **MAPM 11130**.

11100 PROTESTS - SUSPENDED CORPORATIONS

A suspended corporation is one that has had its corporate rights, privileges, and powers suspended by FTB or the Office of the Secretary of State (SOS). A corporation may be suspended for failing to file tax returns, pay taxes, pay assessments, or file the necessary documents with the SOS.

Since a suspended corporation has no privileges or rights, it cannot file a protest or appeal while it is suspended. The taxpayer must revive to good standing within the protest period or appeal period to have a timely protest. Always include NPA paragraph number 54477 if the taxpayer is suspended. (R&TC §23301.)

Also see **MAPM 6170** on Suspended Corporations.

11110 PROTESTS - HEARING

California Revenue and Taxation Code §19044 provides that the Franchise Tax Board will consider the protest and, if an oral hearing was requested on the protest, a hearing will be granted. Hearings are generally conducted at any one of the California field offices. When a hearing is held, the Hearing Officer will generally inform the taxpayer that this type of hearing is informal; the purpose of it is to allow the taxpayer to present its position and/or provide any additional information supporting its position.

Protest cases where substantial documentation is needed or where the failure to furnish penalty was assessed will be returned to the auditor who issued the NPA(s). The Protest Unit will record the protest and notify the auditor that the protest case is being returned for further development/resolution of the protest. See **MAPM 11120** for protest cases returned for further development.

For more specific information regarding the Hearing Process, please click on the following link to the Protest Guide: THE HEARING PROCESS. * * * * *

NOTE: ((* *)) = Indicates confidential and/or proprietary information that has been deleted.

11120 PROTESTS RETURNED FOR FURTHER DEVELOPMENT

In the event that it is determined that a protest case should be returned to the originating auditor, the auditor should continue to factually develop the protest case as in any audit. Once the auditor has completed the fieldwork and analysis, the auditor's findings/final recommendation on the case should be attached to a memo referring the case back to the Protest Unit or the Technical Resource Section, as warranted. If the taxpayer and representative are in agreement with the auditor's recommendation, a Hearing Officer will issue the Notice of Action(s) pursuant to the auditor's recommendation. If the taxpayer and representative are not in agreement with the auditor's recommendation, and they still require an oral hearing, the protest will be assigned to a Hearing Officer to conduct the oral hearing and resolve the case.

Judgment must be exercised in handling protest cases where a hearing is requested. When asking the taxpayer if the hearing is still desired, the auditor should not use language discouraging the taxpayer from exercising the right to a hearing. The auditor is reminded that under the provisions of the law, the taxpayer only needs to request a hearing once in the protest letter.

The auditor should follow the procedures below to ensure the protest is factually developed before referring the case back to the Protest Unit.

1. The auditor should independently review the case.
2. If the NPA is withdrawn, notify the taxpayer that a Notice of Action officially withdrawing the NPA will be issued in due course. (The Protest Unit will issue the Notice of Action – Withdrawal)
3. If additional information is required, the auditor should write to request it. The initial contact letter should acknowledge the protest letter. However, if a hearing was requested, do not ask if the taxpayer wishes to waive the hearing rights at this time.
4. Once all the facts have been gathered, the auditor needs to write a position letter, stating the issue, the facts, the governing law, and the auditor's findings. Allow the taxpayer a reasonable number of days to respond:
 - All position letters should include a paragraph at the end of the letter that gives the taxpayer an opportunity to agree or disagree with the auditor's position.
 - If a hearing was requested, a separate paragraph should be included at the end of the letter that will allow the taxpayer or representative to

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waive the hearing.

NOTE: Notices of Action may never be made to increase the amount of tax and/or penalty on NPAs. In such a case, recommend affirming the previous NPA and prepare a new form FTB 6830 for the additional amount (if not barred by the statute of limitations) starting with the taxable income or net income as revised by the previous NPA as if it had become final. Withdrawal of the previous NPA and issuance of a new one is generally not in order unless the revised tax is on completely different grounds (and is not barred by the statute of limitations).

The following is an example of a closing paragraph that may be used by the auditor:

You have requested an oral hearing, and you have a statutory right to that hearing. Please check below indicating whether you want to exercise your right to a hearing or if you want to waive your right to a hearing.

____ Yes, I wish to have a hearing.

____ No, I want to waive the hearing.

In view of our determination, please indicate if you agree or disagree with our position.

____ Yes, I agree with your position.

____ No, I do not agree with your position. Enclosed is a detailed response including case law, and source documentation supporting my position.

SIGNED: _____ DATED: _____

5. If the taxpayer still wants the hearing or does not specifically waive its right to a hearing in writing, the case should be referred to the Protest Unit. A letter of explanation should be sent to the taxpayer. For example:

This is in response to _____

Since you have requested an oral hearing, your case has been transferred to the Protest Unit. You will be contacted to schedule a hearing at a later date.

If the auditor has done the necessary additional work at protest, developed all the facts, and communicated the legal analysis to the taxpayer and the taxpayer still does not agree with the auditor, the case must be referred to the Protest Unit as an unagreed case. The Hearing Officer assigned to the case will determine if a hearing is still required and will continue to work the protest case.

Even if the taxpayer is in agreement with the auditor's recommendation, if the recommendation is other than a withdrawal and the taxpayer has not agreed in writing to waive the hearing, the case should be treated as an unagreed case and referred to the Protest Unit for a hearing as explained above.

Upon completion of the protest, whether agreed or disagreed, the following procedures should be used to refer the protest back to the Protest Unit:

The case should be assembled with all protest correspondence on top. Auditor notes and/or a Narrative Report clearly outlining the recommended action to be taken at protest should be included. The revised Narrative Report should be in the Protest – Reports Folder on PASS.

The auditor should complete a memorandum back to the Protest Unit. The memo should include reference to the protest being worked by the originating auditor, whether the taxpayer and representative are in agreement or disagreement with the auditor's recommendation, and if a hearing was waived (if applicable).

The auditor should transfer the PASS file to the group work list Protest – Unassigned.

The auditor should transfer the physical file to the Protest Unit, Mail Stop D-12.

11130 PROTESTS - CORRECTION OF NOTICES

After a Notice of Proposed Assessment or a Notice of Action has been issued, the taxpayer occasionally submits supplemental information leading to further correction of the assessment. Depending on the circumstances, the assessment may be corrected by a second Notice of Action or a Notice of Revision; it may be withdrawn and a new NPA issued; or in the case of protested NPAs, it may be restored to protest status. The procedure to be followed is shown below:

1. To Correct an NPA Not Protested:

In the case of NPAs, which are not protested, a Notice of Revision (Form FTB 5932) must be issued prior to the expiration of the 60-day protest period or within the prescribed time if form FTB 6030, NPA - Defer Final Assessment, is appropriate. In no case will issuance of a Notice of Revision extend the protest period beyond 60 days from the date the NPA was issued. The corrected additional tax may not be increased over the amount of the additional tax originally proposed. The Notice of Revision shall bear a notation to the effect, "This notice supersedes the notice of proposed assessment dated (date)."

2. To Correct a NOA

In the case of NPAs that have been protested and a Notice of Action issued, a corrected Notice of Action must be mailed within the 30-day appeal period, or the notice of proposed assessment must be restored to protest status. The action taken by the mailing of the corrected notice will supersede the prior action and the taxpayer will have 30 days from the date of the corrected notice in which to file an appeal. The corrected additional tax may be increased over the amount shown in the notice of action, but may not exceed the amount of the additional tax originally proposed to be assessed. The corrected Notice of Action shall bear a notation to the effect, "This notice supersedes the notice of action dated (date)."

See **MAPM 11140** for reinstating notices to protest status.

3. NPA to be Withdrawn and New NPA Issued

An NPA may be withdrawn and a new one issued only if the statute of limitations has not expired and will not expire prior to the mailing of a new NPA. See **MAPM 9000** for the applicable statute of limitations.

In lieu of issuing a corrected Notice of Action or a Notice of Revision, consideration should be given to withdrawing the assessment and issuing a corrected one when:

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- The NPA contains a technical defect such as an error in the name, address, year, or transposition of numbers.
- The supplementary information received introduces new items of income or disallowance that may not be made a part of the corrected Notice of Action or Notice of Revision.
- The corrected amount of additional tax will exceed the original Notice of Action, Notice of Revision, or the original NPA. However, it may be better to let the Notices of Action or Revision stand and issue another NPA for any additional tax in excess of the Notice of Action, Notice of Revision, or the original NPA.

Other circumstances may arise and they should be judged on their merits. Approval of the supervisor should be obtained where doubt exists whether to withdraw and issue a new NPA or to issue a corrected Notice of Action or Revision.

11140 REINSTATEMENT OF A NOTICE TO PROTEST STATUS

NOTICES OF PROPOSED ASSESSMENT – RESTORED TO PROTEST STATUS:

Occasionally, NPAs becomes "final" in error. When it becomes necessary to reinstate the NPA to protest status, the following will be done:

1. The audit section that issued the NPA will route the corporation file to the Protest Control Desk with instructions, including the identification of notices to be reinstated. The Protest Control Desk technician will correct the account on the BETS.
2. The electronic PASS file should be transferred to the group work list "Protest - Unassigned" with a notation on the event log that the protest was received timely.

In order to determine whether the protest is considered timely, refer to **MAPM 11090**.

NOTICES OF ACTION – RESTORED TO PROTEST STATUS:

If information is received in the audit section or Legal Division that will not permit corrective action within the appeal period, the file will be routed promptly to the Protest Control Desk with a request to have the NOA restored to protest status. The information must be received prior to the expiration of the appeal period to permit restoration to protest status.

If an NOA is restored to protest status, the taxpayer or the representative must be advised by letter, personal contact, or telephone. The Unit/Section or the auditor handling the case will make notification. Notifications made by letter should be worded substantially as follows:

"In accordance with your (letter, telephone call, etc.) of (date), NPA No. _____ for the income year _____ has been restored to protest status and the notice of action issued (date) may be disregarded."

11150 FOLLOW-UP ON NON-FINAL NPAS

In some instances, it is necessary to prevent an NPA from becoming final due to an obvious error or possible redetermination. In this event, the section/unit will defer the NPA from becoming final by requesting that the Protest Control Desk Technician place a hold on the NPA.

11160 APPEALS – RECORDING AND DISPOSITION

When an appeal is filed with the Board of Equalization, the Appeals Section in the Legal Division is notified. The Appeals Section Technician obtains the taxpayer's file. After verifying the appeal information, the appeals are logged into BETS and PASS by the Appeals Section Technician.

After the Board of Equalization has resolved the corporation's appeal by either an opinion or a stipulation, the Appeals Section Technician receives the appellant information to verify jurisdiction. The Legal Division will refer the file to Review and Legal Support - MSA, Technical Resource Section for disposition. The case(s) will come with a cover sheet form FTB 7023 (Appeals Protest Transmittal) for issuance of the Notices of Determination. This includes cases resulting from appeals against the additional assessments as well as denials of claims. Appeals on jeopardy assessments involving illegal activities, (e.g., narcotics, bookmaking, pinball machines), are also referred to the Appeals Section Technician.

11170 APPEALS FROM NOTICES OF ACTION - GENERAL INFORMATION

1. The Board's decision will be reviewed by the Technical Resource Section to determine how it relates to the notice (i.e., Affirmation, Withdrawal, or Revision). If the Board dismissed the appeal at appellant's request or because the appellant did not follow through, the Notice of Action will be affirmed.
2. Technical Resource Section will prepare a Notice of Determination. The file copy of the Notice of Action is used as a worksheet in the right margin. The following information will be completed in red pencil.
 - a. Write the word "APPEAL".
 - b. Write the abbreviation for the action being taken:
 - "AFR" for affirmation
 - "W/D" for withdrawal
 - "REV" for revision
 - c. Write the unit number and initials. (e.g. 346:ABC)
 - d. Below the body of the Notice of Action, write:
 - The current date.
 - A paragraph describing the action being taken.
3. Insert the Board's decision inside the most current return.
4. Review the appeal folder to determine if the corporation made any payment. If a payment was made, enter the standard payment paragraph on the worksheet.
5. On the form FTB 7023 (Appeals Protest Transmittal), the action taken, the routing, and the date are entered.
6. Enter the notice on BETS. To issue a NOR in BETS, follow the instructions provided in the "BETS NPA Procedures."
7. Route the corporation folder to the BE Technical Audit Support Unit for processing. The appeal folder is routed to the Legal Division. If a claim for refund is involved, route the corporation folder to the Corporation Claims Control Desk. The Claims Control Desk Technician will then refer the corporation folder to the BE Technical Audit Support Unit for processing.